IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

Crl.MC.No. 436 of 2007()

SC.62/2006 of ASSISTANT SESSIONS COURT, THRISSUR

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PETITIONER: ACCUSED

RATHEESH, S/O.RAMAN,
PUNJAPADATH HOUSE, NEENDOOR DESOM,
PANNITHADAM.

BY ADV. SRI.RAJIT
SRI.RANJIT BABU

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 436 of 2007

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Dated this the 20th day of February, 2007

O R D E R

The The petitioner faces indictment in a prosecution for offences punishable under Sections 376 and 306 I.P.C. Cognizance has been taken on the basis of a final report submitted by the police. Proceedings were committed by the learned Magistrate to the Court of Sessions. The Court of Sessions, after hearing the petitioner, has already framed charges. The case now stands posted for trial.

2. At this stage, the petitioner has come to this Court with a prayer that the powers under Section 482 Cr.P.C. may be invoked to quash the proceedings. According to the petitioner suicide was not committed and therefore allegation under Section 306 I.P.C. would not stand. He further alleges that the allegation under Section 376 I.P.C. will not also lie because it cannot lightly be assumed in the facts of this case that there was no consent as known to law.

3. I am of the opinion that at this 11th hour, powers under Section 482 Cr.P.C. cannot and need not be invoked to interfere with the procedings which stands listed for trial. The petitioner has not chosen to approach this court earlier. He had the opportunity to raise

his objections against framing of charges. Charges have been framed. The same has not been challenged so far. I am, in these circumstances, satisfied that it is not necessary to interfere with the schedule fixed by the court below by invoking the powers under Section 482 Cr.P.C. The petitioner, who has not chosen to challenge the proceedings all along, cannot be permitted to seek invocation of the extra ordinary inherent jurisdiction at this belated stage. In every case, where there is a possibility of discharge/acquittal, this court cannot be persuaded to invoke the powers under Section 482 Cr.P.C. Totality of circumstances will have to be taken into account, including the conduct of the petitioner, to decide whether powers under Section 482 Cr.P.C. can or ought to be invoked. I am satisfied that this is a fit case where the powers under Section 482 Cr.P.C. need not be invoked to interfere with the trial, which is already listed.

4. This Crl.M.C. is hence dismissed. I may hasten to observe that the dismissal of this Crl.M.C. will not in any way fetter the rights of the petitioner to raise all relevant, appropriate and necessary contentions in the trial before the Court of Sessions.

(R. BASANT)
Judge

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